Supreme Court, U.S.
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No. 95-2090

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

LARRY FIELDS, Director, DAN REYNOLDS, Warden of Oklahoma State Penitentiary; CALVINO S. MUSE, Chairman of the Board of Corrections; HUGH REED; WILLIAM EVANS; PHIL DESSAUER; JOE R. MANNING, JR.; GREGORY H. HALL; and DANIEL BINTZ; ALL MEMBERS OF THE OKLAHOMA BOARD OF CORRECTIONS, Oklahoma Board of Corrections,

Petitioners,

v.

BOBBY BATTLE, *et al.*,

Respondents,

UNITED STATES OF AMERICA,

Plaintiff-Intervenor.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

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36 pp

QUESTIONS PRESENTED

1. In a twenty-four year "structural injunction" suit over prison conditions, does a 1982 finding that prison system is constitutional and a subsequent finding that there is no reasonable likelihood of continued unconstitutional violations deprive federal courts of authority to enforce remedial compliance orders and injunctions left in effect after dismissal?

2. In a twenty-four year "structural injunction" suit over prison conditions, does the newly enacted Prison Litigation Reform Act of 1965 mandate termination of all prospective injunctive relief where there has been a finding of constitutionality since 1982?

LIST OF PARTIES

The parties to this proceeding on *Petition for Writ of Certiorari* are:

Petitioners:

(Defendants in the District Court and Appellees in the United States Court of Appeals for the Tenth Circuit):

LARRY FIELDS
DAN REYNOLDS
CALVINO S. MUSE
HUGH REED
WILLIAM EVANS
PHIL DESSAUER
JOE R. MANNING, JR.
GREGORY H. HALL and
DANIEL BINTZ

Respondents:

(Plaintiffs in the District Court and Appellants in the United States Court of Appeals for the Tenth Circuit):

Bobby Battle, et al.

TABLE OF CONTENTS

Page

PRELIMINARY STATEMENT 1

OPINION BELOW 2

STATEMENT OF JURISDICTION 3

STATUTORY AND CONSTITUTIONAL PROVISIONS 3

STATEMENT OF THE CASE 5

I. THE TENTH CIRCUIT'S INSTRUCTION TO THE DISTRICT COURT TO HOLD AN EVIDENTIARY HEARING IS EXTRA-JURISDICTIONAL AND IS AGAINST THIS COURT'S DECISIONS 8

A. Once the District Court and the Appellate Court Found That the Oklahoma Prison System Met Constitutional Standards, the District Court Had No Jurisdiction to Enforce the Out-dated Injunctions and Properly Dissolved Them 9

B. Once the district court properly dissolved the injunctions, the Tenth Circuit's order directing an evidentiary hearing was extra-jurisdictional 11

1. The district court gave up its jurisdiction in 1983 to decide new allegations and therefore cannot hold an evidentiary hearing on Plaintiffs' most recent motions consisting of new factual allegations 12

II. THE PRISON LITIGATION REFORM ACT MANDATES THAT THE INJUNCTIONS IN THIS CASE BE TERMINATED 13

A. The 1979 Order approving Defendants' plan does not contain the required PLRA findings 15

B. The prospective relief contained in the "orders and injunctions" is not "narrowly drawn" and is not the "least intrusive means" to correct violations of federal rights, as required by PLRA . . 16

CONCLUSION 17

TABLE OF AUTHORITIES

Page

Cases Cited

Battle v. Anderson, 708 F.2d 1523
(10th Cir. 1983), cert. dis. 465 U.S. 1014,
104 S. Ct. 1019 . . . . . 5, 6, 10

Battle v. Anderson, 788 F.2d 1421
(10th Cir. 1986) 6, 9, 10, 12

Bell v. Wolfish, 441 U.S. 520 (1979) 16

Board of Ed. of Oklahoma City Publ. Schools v. Dowell,
498 U.SD. 237 (1991) 8, 17

Farmer v. Brennan, ____ U.S. ____, 114 S. Ct. 1970,
128 L. Ed. 2d 811 (1994) modified 7

Insurance Corporation of Ireland, Ltd.
v. Compagnie Des Bauxites De Guinee,
456 U.S. 694, 102 S. Ct. 2099,
72 L. Ed. 2d 492 (1982) 9

Missouri v. Jenkins,
___ U.S. ____, 115 S. Ct. 2038, 132
L. Ed. 2d 63 (1995) 8, 9, 11, 17

Rhodes, Rhodes v. Chapman,
452 U.S. 337 (1981) 10

Page

Roe v. Wade, 410 U.S. 113 (1973) 15

Rufo v. Inmates of Suffolk County Jail,
502 U.S. 367 (1992) 16

Wilson v. Seiter,
501 U.S. 294 (1991) 7

Statutes and Other Authorities Cited

18 U.S.C. § 3626(A)(1) 4, 5, 13, 14

28 U.S.C. § 1254(1) 3

42 U.S.C.A. § 1983 . . . . . 3, 5

Prison Litigation Reform Act of 1996
(PLRA) Pub. L. No. 104-134,
110 Stat. 1321 . . . . . 1, 3

PRELIMINARY STATEMENT

The case presents the Court with the opportunity to define when federal courts must return control of state prison systems to state officials and in the process end a twenty-four year old lawsuit which has lost its reason for existing. The litigation lives on in the form of out-dated compliance orders and injunctions against a state prison system. The injunctions' requirements exceed constitutional standards. Both the United States District Court for the Eastern District of Oklahoma and the United States Court of Appeals for the Tenth Circuit determined by 1982 that the Oklahoma prison system met constitutional standards. The Tenth Circuit refuses to return control to state officials, in direct conflict with decisions of this Court.

According to this Court's decisions, the appellate court's and district court's findings that the system is operating constitutionally should have deprived the district court of power to enforce the injunctions, and the injunction should have been dissolved. In addition, the Prison Litigation Reform Act of 1996 (PLRA) Pub.L. No. 104-134, 110 Stat. 1321, prohibits prospective relief against prisons unless the prospective relief enjoins unconstitutional actions. Under the newly enacted PLRA, if conditions become constitutional, injunctions must terminate. Although this court's decisions indicate that the injunction in the instant case should dissolve and the Prison Litigation Reform Act dictates that the injunction must terminate, the Tenth Circuit's Opinion and Judgment directs the district court to hold an evidentiary hearing on the possible dissolution of the injunctions and on Plaintiffs' attempt to enforce (via Rule 70 Fed. R. Civ. P. contempt proceedings) compliance orders

and injunctions. The circuit court's instruction unnecessarily perpetuates pointless post-dismissal litigation.

Implicit in the Tenth Circuit's Opinion and Judgment is the unfounded conclusion that, because the Plaintiff class asserts new allegations, the seventeen-year-old injunctions must persevere, even though the system has been determined constitutional since 1982.

This case is important because unwarranted perpetuation of the injunction directly contradicts this Court's principle that the federal judiciary's supervision of state public institutions must end and control must be returned to the officials of the public institution. The Tenth Circuit's failure to recognize that the district court has no power to continue to enforce post-dismissal injunctions is resulting in an unnecessary enforcement of archaic compliance orders and injunctions.

OPINION BELOW

The Opinion and Judgment of the United States Court of Appeals is dated March 29, 1996, and is issued as an unpublished opinion, Opinion and Judgment, Nos. 95-7164 and 96- 7013, cons. March 29, 1996. Appendix A. The panel decision reversed the United States District Court for the Eastern District of Oklahoma's decision to dissolve the old compliance orders and injunctions. The district court decision is unreported. Appendix B.

STATEMENT OF JURISDICTION

The judgment of the Tenth Circuit was entered March 29, 1996. Petitioners invoke this Court's jurisdiction pursuant to 28 U.S.C. § 1254(1) permitting review "[b]y writ of certiorari granted upon the petition of any party to any civil or criminal case before or after rendition of judgment or decree[.]" This Petition for Writ of Certiorari is timely filed within 90 days of March 29, 1996.

STATUTORY AND CONSTITUTIONAL PROVISIONS

United States Code, Title 42:
§ 1983. Civil Action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and las, shall be liable to the party injured in an action at law, suit or equity, or other proper proceeding for redress. For the purposes of this section, and Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia. (R.S. § 1979; Pub. L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284.)

Amendment VIII Constitution of the United States:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIV Constitution of the United States:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United Stats and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title 18 U.S.C. § 3626(A)(1) provides as follows:

(A) REQUIREMENTS FOR RELIEF.

(1) PROSPECTIVE RELIEF. (A) Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right. The court shall give substantial wright to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.

Title 18 U.S.C. § 3626(b)(2) provides as follows:

(b) TERMINATION OF RELIEF

(2) IMMEDIATE TERMINATION OF PROSPECTIVE RELIEF. In any civil action with respect to prison conditions, a defendant or intervener shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.

STATEMENT OF THE CASE

Former Oklahoma inmate Bobby Battle filed a 42 U.S.C.A. § 1983 lawsuit, appearing pro se, in 1972. Battle's complaint challenged the conditions of confinement in the Oklahoma prison system. Plaintiff acquired public interest lawyers and gained class certification. Eventually, Oklahoma State officials presented the trial court with a plan to alleviate alleged constitutional deficiencies. Plaintiffs objected, but the court accepted the plan.

In 1982, the district court decided that the system was complying with constitutional requirements. A panel of the Tenth Circuit affirmed the finding that the system met constitutional standards. Battle v. Anderson, 708 F.2d 1523, 1537 (10th Cir. 1983), cert. dis. 465 U.S. 1014, 104 S.Ct.

1019. The court, however, decided that the district court should continue to exercise supervisory power until it found that there was no reasonable expectation that unconstitutional practices would recur. Battle v. Anderson, 708 F.2d at 1538.

In 1983, the district court dismissed the entire case, holding that there was no reasonable expectation that unconstitutional practice would recur. Memorandum Opinion and Order, December 30, 1983. On appeal, the Tenth Circuit affirmed, with one exception,[1] Battle v. Anderson, 788 F.2d 1421 (10th Cir. 1986). The Tenth Circuit affirmed the district court's decision to dismiss the underlying causes of action, but retained those injunctions and orders protecting constitutional violations. Id. at 1429 (emphasis added).

In 1995, the district court, recognizing that the Department had met the appropriate standards for dissolution of the out-dated injunction, notified parties of the opportunity to present argument regarding the dismissal of the injunctions. Comprehending that the injunction prohibited only behavior which violated **constitutional** requirements, the district court specified that the altered

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[1] The circuit court determined that the record did not contain sufficient findings and conclusions to show compliance on the racial discrimination claim. Battle v. Anderson, 788 F.2d at 1423.

Eighth Amendment standard[2] affected the grounds for the injunction. On September 21, 1995, the district court notified the parties of their opportunity to be heard regarding the possible dissolution of the antiquated injunctions. The parties then presented their arguments to the court. In addition, Plaintiffs filed motions to enforce compliance based on totally new allegations.

The district court considered the parties' positions regarding the possible dissolution of the injunctions. The trial court also considered the prior findings that the prison system was meeting constitutional standards as well as this Court's recent decisions regarding Eighth Amendment standards. After no party presented persuasive argument against dissolution, the district court properly dissolved the injunctions.

On appeal, the circuit court remanded the case. That court directed the district court to hold an evidentiary hearing to determine whether the new Eighth Amendment standard destroyed the grounds for the old injunctions and to hear Plaintiffs' motions regarding non-compliance issues.

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[2] This Court's decisions in Wilson v. Seiter 501 U.S. 294 (1991), and Farmer v. Brennan, ____ U.S. ____, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994) modified the prior standard required to show an Eighth Amendment violation. In addition to showing that a defendant's behavior objectively violated the cruel and unusual punishment clause, these cases require the plaintiff to show that a defendant possessed a culpable state of mind.

I. THE TENTH CIRCUIT'S INSTRUCTION TO THE DISTRICT COURT TO HOLD AN EVIDENTIARY HEARING IS EXTRA-JURISDICTIONAL AND IS AGAINST THIS COURT'S DECISIONS.

In Missouri v. Jenkins, ____ U.S. ____, 115 S.Ct. 2038, 132 L.Ed.2d 63 (1995), this Court again acknowledged the limitations in the duration and scope of the federal judiciary's supervision of state institutions. The Court reviewed a long-standing injunction against a Kansas City public school district and determined that the district court's order directing the school district to grant interdistrict pay raises to correct intradistrict racial segregation was outside the scope of the injunction. Relying on Board of Ed. of Oklahoma City Publ. Schools v. Dowell, 498 U.SD. 237 (1991), Freeman , 503 U.S. 467 (1992) and Milliken, 433 U.S. 267 (1977) this Court held that federal supervision of the institution was intended as a temporary measure to remedy past discrimination. Missouri v. Jenkins, 132 L.Ed.2d at 80, citing Dowell, 498 U.S. at 247. As the Court explained, the aim of federal injunctions against public institutions is the eventual restoration of "state and local authorities to the control of a[n] [institution] that is operating in compliance with the Constitution." Missouri v. Jenkins, 132 L.Ed.2d at 81, quoting Freeman, 503 U.S. at 489. The Court further stated that federal court decrees which endeavor to eliminate conditions which are not violative of the Constitution exceed the appropriate limits. Missouri v. Jenkins, 132 L.Ed.2d at 86, quoting Milliken 433 U.S. at 282.

As this Court stated in Insurance Corporation of Ireland, Ltd. v. Compagnie Des Bauxites De Guinee:

> Subject matter jurisdiction . . . is an Art. III as well as statutory requirement; it functions as a restriction on federal power, and contributes to the characterization of the federal sovereign.

456 U.S. 694, 702, 102 S.Ct. 2099, 72 L.Ed.2d 492 (1982).

The long-standing Battle compliance orders and injunctions, like the injunctions in Jenkins, must be limited in scope and duration. The district court was correct in acknowledging the return of control to state officials. The circuit court's remand of the case and instruction to the district court to hold an evidentiary hearing went beyond the subject matter jurisdiction and was extra-jurisdictional.

A. Once the District Court and the Appellate Court Found That the Oklahoma Prison System Met Constitutional Standards, the District Court Had No Jurisdiction to Enforce the Out-dated Injunctions and Properly Dissolved Them.

Federal courts have the authority to enjoin only actions which violate constitutional standards. Missouri v. Jenkins, 132 L.Ed.2d at 86. The supervising court must strive to restore control of an institution operating in compliance with the Constitution to the proper officials. Id.

at 81. A review of this case reveals that both the district court and the appellate court have determined that the prison system is constitutional. Following the district court's 1982 decision that the system was constitutional, a panel of the Tenth Circuit determined that the system met constitutional standards. The panel stated, "...we...agree that present conditions, as described by the district court appear constitutionally adequate under the standards set forth in Rhodes[3]." Battle v. Anderson, 708 F.2d at 1537 (10th Cir. 1983). Thus by 1983, even the circuit court found that all the conditions in the Oklahoma prison system were constitutional.

In December of 1983, the district court dismissed the case. Memorandum Opinion and Order, No. 72-95-C, December 30, 1983. On appeal, the Tenth Circuit affirmed, with one exception.[4] Battle v. Anderson, 788 F.2d 1421 (10th Cir. 1986). The rub is that, the Tenth Circuit also affirmed the district court's decision to leave in effect those injunctions **against constitutional violations.** Id. at 1429 (emphasis added).

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[3] Rhodes v. Chapman, 452 U.S. 337 (1981).

[4] The Tenth Circuit's 1983 decision affirmed the district court's 1982 decision that the prison system was constitutional and therefore established that constitutionality as the law of the case. However, even under the appellate court's 1986 finding that system was constitutional on all claims including the racial discrimination claim. The circuit did not think the record sufficient to show likelihood of continued compliance on the racial discrimination claim.

The findings of the district court in 1982 and 1983 as well as the findings of the Tenth Circuit in 1983 and 1986 repeatedly established that the prison system was meeting constitutional standards. The decisions that no constitutional violations existed unquestionably met the Missouri v. Jenkins "ultimate inquiry" for dissolving injunctions against institutions: the judicial determinations that the unconstitutional practices had ceased demonstrated the Department's good faith compliance with the injunction and indicated that the past unconstitutional practices had been eliminated to the extent practicable. Missouri v. Jenkins, 132 L.Ed.2d at 81. In accordance with the decisions of the district court and the Tenth Circuit and with this Court's decision in Missouri v. Jenkins, **the district court has no jurisdiction to revisit and enforce the old compliance orders.**

B. Once the district court properly dissolved the injunctions, the Tenth Circuit's order directing an evidentiary hearing was extra-jurisdictional.

The circuit court's requirement that the district court hold an evidentiary hearing following the district court's appropriate dissolution of the injunction was outside the scope of the court's Article III powers and unnecessarily perpetuated the out-dated federal court intervention. The appellate court directed the district court to hear evidence on Plaintiffs' motions to enforce compliance orders and injunctions and the dissolution issues. However, the instruction to hear evidence on these issues was inappropriate.

1. The district court gave up its jurisdiction in 1983 to decide new allegations and therefore cannot hold an evidentiary hearing on Plaintiffs' most recent motions consisting of new factual allegations.

The circuit court remanded the case not only for the district court to determine whether the injunctions should be dissolved but also for the court to hold an evidentiary hearing on Plaintiff's motions to enforce the injunctions. Plaintiffs' motions, however, are based on absolutely new factual allegations. Plaintiffs seek to relitigate compliance issues lost in 1982.

The district court has no jurisdiction to hear the newly created compliance allegations. In 1986, the circuit court affirmed the district court's dismissal of all causes of action except racial discrimination. The appellate court explicitly found that the lower court's dismissal of the Eighth Amendment claim was without error. Battle v. Anderson, 788 F.2d at 1428-29. That Opinion left the district court, if anything, only with the authority to consider compliance issues surrounding the racial discrimination allegations. Id. at 1429.

The circuit court seems to have, at least in part, recognized its self-created dilemma. The court stated:

> Obviously, [the evidentiary] hearing will be limited to the issues raised by the parties' filings and cannot be used

> by the plaintiffs to expand the present case or, in effect, bring a new action.

Battle v. Fields, Order and Judgment, Nos. 95-7164 and 96-7013, cons., March 29, 1996.

The circuit half-recognized that the district court cannot hear new allegations at this late date. However, it improperly remanded the case for the district court to hear the new Eighth Amendment allegations introduced in Plaintiffs' motion. The district court no longer has jurisdiction to hear the new allegations, and the district court's consideration of the allegations would permit the Plaintiffs' to improperly initiate new causes of action in this twenty-four-year-old litigation. Therefore, the circuit court's order that the district court hold an evidentiary hearing on Plaintiffs' motion was improper.

II. THE PRISON LITIGATION REFORM ACT MANDATES THAT THE INJUNCTIONS IN THIS CASE BE TERMINATED.

On April 26, 1996, the President signed into effect the Prison Litigation Reform Act (PLRA). Section 802 of Title VIII, entitled "Appropriate Remedies for Prison Conditions," amends 18 U.S.C. § 3626. The clear intent of Congress as stated in § 802(b)(1) of the PLRA is that the amended § 3626 "shall apply with respect to all prospective

relief[5] [in any civil action with respect to prison conditions] whether such relief was originally granted or approved before, on, or after the date of the enactment of this title."

Title 18 U.S.C. § 3626(b)(2) provides as follows:

(b) TERMINATION OF RELIEF

(2) IMMEDIATE TERMINATION OF PROSPECTIVE RELIEF. In any civil action with respect to prison conditions, a defendant or intervener shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.

Pursuant to the PLRA, the "orders and injunctions" in this cased relating to prospective relief (i.e., continued compliance with the injunction) should be terminated. The PLRA requires that all prospective relief terminate unless the trial court has issued findings that the relief is narrowly drawn, extends no further than necessary to correct the violation of a federal right, and is the least intrusive means necessary to correct the violation. The district court did not, and cannot, make those findings. Therefore, no case or

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[5] "Prospective relief" is defined in § 3626(g)(7) as "all relief other than compensatory monetary damages."

controversy exists at this time. If a case is no longer justiciable, the case may be resolved at any time, even during this Court's review of a petition for certiorari. Roe v. Wade, 410 U.S. 113, 125 (1973).

A. The 1979 Order approving Defendants' plan does not contain the required PLRA findings.

According to § 3626(b)(2) of the PLRA, the trial court granting prospective relief must make specific findings that the relief is narrowly drawn, extends no further than necessary to correct the violation of the federal right, and is the least intrusive means necessary to correct the violation of the Federal right. Absent such findings, § 3626(b)(2) provides that a defendant is entitled to "the immediate termination of any prospective relief."

It cannot reasonably be suggested that the 1979 Order approving the Defendants' plan contains the findings now required by § 3626(b)(2). Even assuming that the 1979 Order ever met the PLRA's requirements, the district court and appellate court have determined that the prison system meets constitutional standards. The current injunction does not meet the statutory requirement that the relief ordered is to extend "no further than necessary to correct the federal right."

According to the district court and the Tenth Circuit, no violation of federal rights exists in this case. Federal supervision should end.

B. The prospective relief contained in the "orders and injunctions" is not "narrowly drawn" and is not the "least intrusive means" to correct violations of federal rights, as required by PLRA.

In the present case, the injunction cannot reasonably be described as extending no further than necessary to correct any violations presently identified. The law of the case in this litigation is that no violation of a federal right exists. As an example, the 1979 decree incorporated standards of the American Correctional Association as well as standards of the American Public Health Association and Life Safety Code. These standards represent goals of the Oklahoma Department of Corrections rather than minimum levels of operation necessary to satisfy the Constitution. See Bell v. Wolfish, 441 U.S. 520, 543-44, n. 27 (1979). The State's plan implementing standards such as these was not an effort to meet the constitutional minimum but was a reflection of state officials' quest "to do more than that which is minimally required by the Constitution [in order] to settle a case and avoid further litigation. . . ." Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367, 392 (1992).

The PLRA appears to mirror the limits established by this Court in grants of relief in institutional reform litigation. In this case, both the district court and the appellate court have found that the system is constitutional. Therefore, pursuant to the PLRA, the orders and injunctions in place must be terminated.

The instant orders and injunctions were not derived from a consent decree. Plans were instituted unilaterally by state officials. This matter has always been addressed to the limited authority of federal courts. The PLRA mandates an end to this case.

CONCLUSION

The Tenth Circuit's opinion directed the district court to take action it has no power or authority to take. The district court and the Circuit Court have already established that the system has met constitutional standards.

The parties cannot assert new allegations. Evidence is irrelevant in determining whether a changed legal standard affected the existing injunctions. The injunctions are detailed in the court record which covers twenty-four years of litigation. Therefore, no possible reason exists to present evidence.

The Tenth Circuit's order was contrary to this Court's limitation of perpetual institutional injunctions in Milliken, Freeman, Dowell, and Jenkins, and the orders and injunction therefore must be dissolved. In addition, pursuant to the PLRA, prospective relief must be terminated. Therefore, this Court should grant certiorari to review the Tenth Circuit's perpetuation of the antiquated compliance orders and injunctions against officials of the Oklahoma Department of Corrections.

Respectfully submitted,

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APPENDIX

INDEX OF APPENDICIES

Appendix A

Text of Decision of the Tenth Circuit on the Merits.

> Bobby BATTLE, et al., Plaintiffs-Appellees, v. Larry FIELDS, Director Dan Reynolds, Warden of Oklahoma State Penitentiary; Calvino S. Muse, Chairman of the Board of Corrections; Hugh Reed, Williams Evans; Phil Dessauer; Joe R. Manning, Jr.; Gregory H. Hall; and Daniel Bintz; All Members of the Oklahoma Board of Corrections, Oklahoma Board of Corrections, Defendants-Appellee, United States of America, Plaintiff-Intervenor, Nos. 95-7164 and 95-7013

Appendix B

Text of an Order of the Tenth Circuit entered on Novembet 15, 1995.

> United States District Court, for the Eastern District of Oklahoma Bobby Battle, et al., Plaintiffs-Appellants, v. Park J. ANDERSON, et al., Defendants-Appellees. No. 72-095-C ORDER entered November 15, 1995

APPENDIX A

March 29, 1996

Bobby BATTLE, et al.,

Plaintiffs-Appellees

v.

Larry FIELDS, Director Dan Reynolds, Warden of Oklahoma State Penitentiary; Calvino S. Muse, Chairman of the Board of Corrections; Hugh Reed, Williams Evans; Phil Dessauer;Joe R. Manning, Jr.; Gregory H. Hall; and Daniel Bintz;All Members of the Oklahoma Board of Corrections, Oklahoma Board of Corrections

Defendants-Appellee

United States of America,

Plaintiff-Intervenor

Nos. 95-7164, 95-7013
United States Court of Appeals
Tenth Circuit
June 25, 1996

Appeal from the United States District Court
or the Eastern District of Oklahoma

Guy L. Hurst
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ANDERSON, TACHA AND EBEL, Circuit Judge

On October 28, 1994, the Plaintiffs filed a motion to enforce certain injunction previously entered in this case. On November 17, 1994, the district court issued an order denying the motion, and sua sponte dissolving the injunctions and dismissing the case, except for the Fourteenth Amendment segregation issue originally remanded by this court in 1986.

We subsequently vacated the district court's order and remanded the case with instructions to conduct an evidentiary hearing on the plaintiffs' motion and on the issue of dissolution. Battle v. Fields, No. 94-1715 (10th Cir. June 27, 1995), Appellants' App. Vol. III, Tab 18. The defendants thereafter filed a motion to terminate the case. The district court then directed the parties to present arguments in writing addressing the following question: "[W]hy shouldn't all of the existing injunctions be dissolved as a matter of law in light of . . . this Court's finding of compliance in 1983, and the Tenth Circuit affirming of that finding in 1986." Appellants' App. Vol. III, Tab 19, at 5-6. After the parties briefed that issue, the district court determined that "[t]o resolve this legal issue, . . . oral argument and an evidentiary hearing are unnecessary." Battle v. Anderson, No. 72-095-C, slip op. at 1 (E.D.) Okla. Nov. 15, 1995), Appellants' App. Vol. III, Tab 26. The court then proceeded to enter an order on November 15, 1995, readopting its previous conclusions and once again dissolving the injunctions and dismissing the case. With respect to the matter of an evidentiary hearing, the court reasoned as follows:

> If this court conducted further evidentiary hearings in accordance with the prior injunctions, the proceedings would necessarily require a retrial of the original case, based on present conditions, but using outdated

> standards. It is conceivable that such a hearing would be of any value, although it would indeed be time consuming and expensive.
>
> ....
>
> If this court is required to conduct further evidentiary hearings, modification of the prior injunctions will be necessary to comport with existing caselaw. . . . [A]ny further evidentiary hearing without using present constitutional standards would be futile and encompass hours of necessary discovery and testimony.

Id. at 2-3.

At the plaintiffs' request, we stayed the district court's order pending appeal. The plaintiffs and the United States, as plaintiff-intervenor, filed separate notices of appeal, which we have consolidated.

As a threshold matter, we reject the argument advanced by the defendants that, in substance, this case was concluded in 1983. It is too late in the day in this litigation to dispute the existence and vitality of injunctions affecting the parties. Indeed, the district court's November 17, 1994, and November 15, 1995, orders specifically address the dissolution of such injunctions. Additionally, we have previously affirmed the district court's continuing jurisdiction over this litigation and have explicitly recognized the continuing viability of the injunctions entered by the court. See Battle v. Anderson, 788 F.2d 1421, 1428 n.5 (10th Cir. 1986) ("[I]t is unmistak[a]bly clear that the orders and injunctions protecting the inmates against constitutional violations. . . . remain in full force and effect."); Battle v. Anderson, 708 F.2d 1523, 1538-39 n.4 (10th Cir. 1983)("If

an injunction is to be effective, a court must retain continuing jurisdiction to enforce . . . the terms of its orders. The court cannot be divested of jurisdiction by temporary compliance with the injunction.")(citations omitted), cert dismissed, 465 U.S. 1014 (1984). And, as already indicated, most recently we remanded the case to the district court with express directions to hold a hearing on the plaintiffs' enforcement motion and on the potential dissolution of the injunctions. See Appellants' App. Vol. III, Tab 18, at 2.

Regarding the procedural posture of the case, we respectfully disagree with the district court's conclusion that changed legal standards make an evidentiary hearing futile and unnecessary. In a case like this the validity of the parties' allegations and the propriety of dissolving the injunctions and dismissing the case cannot be properly determined without an evidentiary hearing. See Battle, 708 F.2d at 1539 (The district court "is the only court equipped to test evidentiary compliance and the only forum in which to raise any allegations of continuing deficiencies.")(quoting Finney v. Arkansas Board of Corrections, 505 F.2d 194, 215 (8th Cir. 1974). To the extent changed legal standards apply, one of the major purposes of a factual presentation is to establish on a point by point basis how such standards do or do not affect the existing injunctions. The resulting analysis and disposition by the court will be directed to a relevant factual record. The evidence, together with the findings and conclusions of the district court, will then provide the record necessary for appellate review. It is the absence of such a record that prompted our remand in the first place.

Accordingly, we again vacate the district court's order and remand this case for a full and fair evidentiary hearing on the plaintiffs' motion to enforce the injunctions and on the defendants' motion, filed since our last remand, to dissolve

the injunctions and dismiss the case. Cf. Battle v. Anderson, 594 F.2d 786, 789 (10th Cir. 1979)(remanding for further evidentiary hearings on defendants' compliance with court's prior orders). Obviously, the hearing will be limited to the issues raised by the parties' filings and cannot be used by the plaintiffs to expand the present case or, in effect, bring a new action. We of course express no opinion on the merits of the parties' motions or any other matter pending before the district court in this case.

Finally, we reluctantly conclude that on remand this case must be assigned to a new judge. The experienced district judge who has handled this case to date has done so with the utmost competence and professionalism. There is no question that the judge has and would continue to treat the parties with scrupulous fairness. however, the very basis for the court's order now on appeal is that an evidentiary hearing will be futile, and its conclusion is foregone. The appearance, not the fact, of bias arising from this reasoning would color future proceedings. The case may be reassigned on remand in accordance with the applicable local rules of the district court.

Accordingly, for the reasons stated above, the order of the district court is VACATED, and the case is REMANDED for further proceedings before a different judge.

ENTERED FOR THE COURT

Stephen H. Anderson

Circuit Judge

APPENDIX B

United States District Court,
for the Eastern District of Oklahoma

Bobby Battle, et al.,

Plaintiffs-Appellants,

v.

Park J. ANDERSON, et al.,

Defendants-Appellees.

No. 72-095-C

ORDER
Entered November 15, 1995.

Before The Honorable Frank H. Seay,
United States District Court

This matter is before the court pursuant to an order of the United States Court of appeals for the Tenth Circuit ("the Circuit Court") in Battle v. Fields, No. 94-7175 (10th Cir. June 27, 1995). In its order, the Circuit Court found that this court's order of November 17, 1994, denying plaintiffs' motion to enforce certain injunctions and dissolving all existing injunctions in the underlying case, should be vacated and remanded to this court to have a hearing to determine the issues raised by plaintiffs' motion[1] and to determine whether existing injunctions should be dissolved.

The parties have now had that opportunity to be heard on their respective positions, in that on September 21, 1995, the parties were given the opportunity, in fact, they were directed to file briefs on the issue of whether or not this court should dissolve the prior injunctions in this case as a matter of law. The parties filed briefs, and none requested oral argument. To resolve this legal issue, this court finds oral argument and an evidentiary hearing are unnecessary, and that the parties have been afforded due process. Dowell ex rel. Dowell v. Board of Educ., 8 F.3d 1501 (10th Cir. 1993); United States v. Colorado, 937 F.2d 505 (10th Cir. 1991).

In its order of November 17, 1994, this court found that the previously entered injunctions were archaic and did not embody current constitutional requirements as enunciated and defined by more recent supreme Court decisions, and the court dissolved those injunctions as a matter of law. See, Farmer v. Brennan, ____ U.S. _____, 114 S.Ct. 1970 (1994); Wilson v. Seiter, 501 U.S. 294 (1991). Plaintiffs have not

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[1] Plaintiffs conceded, before the Circuit Court and this court, that the only issue raised by plaintiffs in their original motion, i.e., overcrowding at the Lexington facility, has been resolved.

addressed the obvious question of why the previous injunctions issued by this court are necessary to maintain and enforce constitutional standards in light of recent Supreme Court decision setting modern constitutional standards for the operation of prisons. If this court conducted further evidentiary hearings in accordance with the prior injunctions, the proceedings would necessarily require a retrial of the original case, based on present conditions, but using outdated standards. It is inconceivable that such a hearing would be of any value, although it would indeed be time consuming and expensive.

This court notes, however, that other courses of action may be appropriate. As stated in this court's previous order, the class may urge recertification and new injunctions under current case law in a new lawsuit, or the circuit Court may agree with this court's finding that the issues raised by counsel are being addressed in a more efficient manner through individual prisoner §1983 petitions.

If this court is required to conduct further evidentiary hearings, modification of the prior injunctions will be necessary to comport with existing caselaw. In the unlikely event the Circuit Court directs additional evidentiary hearings on constitutionality, those hearings would be conducted within the parameters of the latest supreme Court decisions, and the additional facts and status of the prisoners would be measured by the current Supreme Court constitutional standards. If additional evidentiary hearings to determine constitutionality are required, a significant new issue would be whether or not the defendants have a defense based upon lack of intent due to a failure of the state legislature to appropriate funds or a "cost" defense. Wilson, 501 U.S. at 301-302. Because this is an open issue which has not been addressed by the supreme Court, any further evidentiary hearing without using present

constitutional standards would be futile and encompass hours of unnecessary discovery and testimony.

Since this court's order dissolving the prior injunctions, the plaintiffs have filed requests for injunctions, contempt and sanctions concerning the use of the condemned East cellhouses and alleged triple celling at the Mabel Basset Correctional Center. These issues, however, were not before the court at the time this court entered its order of November 17, 1994, dissolving the prior injunctions and ending its supervisory role over the Oklahoma Penal System.[2] Therefore, this court finds those requests for further injunctive relief to be premature until this court's order of November 17, 1994, and this order, dissolving the prior injunctions on which the plaintiffs' current requests for injunctive relief are based, have been resolved.

Accordingly, after notice to and briefing by the parties, this court adopts its findings and order of November 17, 1994, dissolving the prior injunctions entered herein, and dismissing this case, except for the Fourteenth Amendment racial segregation issue originally remanded to this court by the Circuit Court in 1986.

IT IS SO ORDERED this 15th day of November, 1995.

Entered for the Court

FRANK H. SEAY
UNITED STATES DISTRICT JUDGE

---

[2] This court retains jurisdiction over the Fourteenth Amendment racial segregation issue.

Supreme Court, U.S.
FILED
AUG 30 1996
CLERK

No. 95-2090

In The

Supreme Court of the United States

October Term, 1995

LARRY FIELDS, Director, DAN REYNOLDS, Warden of Oklahoma State Penitentiary; CALVIN S. MUSE, Chairman of the Board of Corrections; HUGH REED; WILLIAM EVANS; PHIL DESSAUER; JOE R. MANNING, JR.; GREGORY H. HALL; and DANIEL BINTZ, all members of the Oklahoma Board of Corrections; OKLAHOMA BOARD OF CORRECTIONS,

Petitioners,

v.

BOBBY BATTLE, et al.,

Respondents,

UNITED STATES OF AMERICA,

Plaintiff-Intervenor.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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29 pp

QUESTIONS PRESENTED

1. Whether the Court of Appeals applied the proper legal standard in reviewing the district court's Rule 60(b) order.

2. Whether petitioners may contest the district court's jurisdiction to enter an order leaving remedial injunctions in effect when (i) the district court entered the order in 1983 at the urging of petitioners; (ii) petitioners urged affirmance of that order on appeal; and (iii) petitioners failed to seek a timely review of the order in this Court.

3. Whether petitioners' claim that the Prison Litigation Reform Act applies to this pending case and requires dissolution of the existing injunctions is ripe for this Court's review.

LIST OF INTERESTED PARTIES

The parties to the proceeding on Petition for Writ of Certiorari who were not included in the Petition are:

Respondents

The following are respondents before this Court and were plaintiffs in the district court and appellants in the United States Court of Appeals for the Tenth Circuit:

* All persons incarcerated by the Oklahoma Department of Corrections.

The following is also a respondent in this Court and was a plaintiff-intervenor in the district court and appellant in the United States Court of Appeals for the Tenth Circuit:

* United States of America

TABLE OF CONTENTS

Page

Questions Presented i

List of Interested Parties ii

Table of Authorities iv

Statement of the Case 1

Corrections of Misstatements in the Petition 5

Reasons for Denying the Writ 7

I. Issuance of petitioners' Writ is not warranted under Supreme Court rules 7

II. The Court of Appeals applied the correct legal standards 9

A. Scope of Judicial Review 9

B. The Court of Appeals correctly ordered an evidentiary hearing 10

III. The petition seeks to reverse a 1983 order which petitioners neither contested nor appealed 13

IV. The history of this case evidences limited and appropriate federal supervision 15

V. The issue of the application of the Prison Litigation Reform Act is not ripe for review 18

Conclusion 21

TABLE OF AUTHORITIES

Page

CASES

Aetna Life Ins. Co. v. Hayworth, 300 U.S. 227, 57 S.Ct. 461, 81 L.Ed. 617 (1937) 18

Alexander v. Boyd, C/A No. 3.90.3062-17 (D.S.C. May 29, 1996) 19

Asbury Hospital v. Cass County, 326 U.S. 207, 66 S.Ct. 61, 90 L.Ed. 6 (1945) 20

Aucoin v. K-Mart Apparel Fashion Corp., 943 F.2d 6 (5th Cir. 1991) 10

Battle v. Anderson, 376 F. Supp. 402 (E.D. Okla. 1974) 1

Battle v. Anderson, 447 F. Supp. 516 (E.D. Okla. 1977) 1, 3, 6

Battle v. Anderson, 457 F. Supp. 719 (E.D. Okla. 1978) 1, 6, 15, 16

Battle v. Anderson, No. 72-95-B (E.D. Okla. May 4, 1979) 1, 3, 16

Battle v. Anderson, 594 F.2d 786 (10th Cir. 1979) ... 1, 6, 16

Battle v. Anderson, No. 72-95-C (E.D. Okla. Dec. 30, 1983) 2, 5, 6, 13, 14, 16

Battle v. Anderson, 708 F.2d 1523 (10th Cir. 1983) 11

Battle v. Anderson, 788 F.2d 1421 (10th Cir. 1986) 3, 5, 6, 14

Battle v. Fields, No. 94-7175 (10th Cir. June 27, 1995) (1995 U.S.App. LEXIS 15927) 3, 10

TABLE OF AUTHORITIES – Continued

Page

Battle v. Anderson, No. 72-95-C (E.D. Okla. Nov. 15, 1995) 4

Battle v. Fields, Nos. 95-7164 and 95-7013 (10th Cir. Mar. 29, 1996) 4, 11

Benjamin v. Jacobson, No. 75-CIV-3073 (H.B.) (S.D.N.Y. July 23, 1996) 19

Board of Educ. of Okla. City v. Dowell, 498 U.S. 237, 111 S.Ct. 630, 112 L.Ed.2d 715 (1991) 12

In re Burnley, 988 F.2d 1 (4th Cir. 1992) 10

Carty v. Farrelly, No. CIV-94-78 (D.V.I. July 17, 1996) 19

Central W. Rental Co. v. Horizon Leasing, Div. of Horizon Financial, F.A., 967 F.2d 832 (3d Cir. 1992) 9

Cox v. Sandia Corp., 941 F.2d 1124 (10th Cir. 1991) 10

Communist Party v. Subversive Activities Control Bd., 367 U.S. 1, 81 S.Ct. 1357, 6 L.Ed.2d 625 (1961) 18, 20

Davis v. Jellico Community Hosp., 912 F.2d 129 (6th Cir. 1990) 10

Delancy v. St. Paul Fire & Marine Ins. Co., 947 F.2d 1536 (11th Cir. 1991) 10

Elsken v. Network Multi-Family Sec. Corp., 49 F.3d 1470 (10th Cir. 1995) 10

TABLE OF AUTHORITIES – Continued

Page

Fiore v. Washington County Mental Health Center, 960 F.2d 229 (1st Cir. 1992) 9

Freeman v. Pitts, 503 U.S. 467, 112 S.Ct. 1430, 118 L.Ed.2d 108 (1992) 12

Gate v. Gomez, No. CIV-S-87-1636-LKK (E.D. Cal. July 23, 1996) 19

Green v. Nottingham, No. 96-511 (10th Cir. July 10, 1996) (1996 WL 384762) 19

Kovacs v. Brewer, 356 U.S. 604, 78 S.Ct. 963, 2 L.Ed.2d 1008 (1958) 20

Landgraf v. USI Film Products, 511 U.S. 244, 114 S.Ct. 1483, 128 L.Ed.2d 229 (1994) 19

Lewis v. Casey, 518 U.S. ___, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996) 16

Miliken v. Bradley, 433 U.S. 267, 97 S.Ct. 2749, 53 L.Ed.2d 745 (1977) 14

Printed Media Serv. v. Solna Web, Inc., 11 F.3d 838 (8th Cir. 1993) 10

Renne v. Geary, 501 U.S. 312, 111 S.Ct. 2331, 115 L.Ed.2d 288 (1991) 18, 21

Rhodes v. Chapman, 452 U.S. 337, 101 S.Ct. 2392, 69 L.Ed.2d 59 (1981) 17

Richmark Corp. v. Timber Falling Consultants, Inc., 937 F.2d 1444 (9th Cir. 1991) 10

Rodgers v. Wood, 910 F.2d 444 (7th Cir. 1990) 10

TABLE OF AUTHORITIES – Continued

Page

Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367, 112 S.Ct. 748, 116 L.Ed.2d 867 (1992) 12

Still's Pharmacy, Inc. v. Cuomo, 981 F.2d 632 (2d Cir. 1992) 9

Swann v. Charlotte Mecklenburg Board of Education, 407 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971) 15

Toilet Goods Ass'n v. Gardner, 387 U.S. 158, 87 S.Ct. 1520, 18 L.Ed.2d 697 (1967) 18

United States v. Petrillo, 332 U.S. 1, 67 S.Ct. 1538, 91 L.Ed. 1877 (1947) 20

West v. Atkins, 487 U.S. 42, 108 S.Ct. 2250, 101 L.Ed.2d 40 (1988) 20

STATUTES CITED

Prison Litigation Reform Act, 18 U.S.C. § 3626(b)(2) 5

RULES CITED

United States S. Ct. Rule 10.1 7

United States S. Ct. Rule 15.2 5

Fed.R.Civ.P. Rule 60(b) 4, 9, 10

STATEMENT OF THE CASE

The injunctive orders at issue in this case were entered in 1974 and 1979. The injunctive relief ordered in 1974 was based upon findings of fact and conclusions of law entered upon a full trial before the United States District Court for the Eastern District of Oklahoma, Bohanan, J. The findings of fact and conclusions of law set out in detail the serious constitutional violations existing in the Oklahoma prison system. *Battle v. Anderson*, 376 F. Supp. 402 (E.D. Okla. 1974). The defendants did not appeal that order.

The 1979 injunctions were entered after a series of hearings and appeals concerning the conditions of confinement in Oklahoma prisons, as well as medical care, racial segregation and discrimination, and court access. The 1979 injunctions were based on findings made by the district court in 1977 and 1978 that specific conditions in Oklahoma's prisons violated the Constitution, and contained orders to remedy those conditions. *Battle v. Anderson*, 447 F. Supp. 516 (E.D. Okla. 1977) and *Battle v. Anderson*, 457 F. Supp. 719 (E.D. Okla. 1978). The defendants conceded the unconstitutionality of those conditions on appeal and urged a remand of the proceedings in order to be heard further concerning the remedy. *Battle v. Anderson*, 594 F.2d 786 (10th Cir. 1979). Upon remand the district court accepted in full a remedy proposed by the defendants. No. 72-95-B (E.D. Okla. May 4, 1979) (Appendix A).

In 1983 the defendants moved the district court to dismiss the case but did not request the dismissal of the

remedial injunctions. *See* No. 72-95-C, Dfts. Mot. to Dismiss, Sept. 7, 1983. After an evidentiary hearing, the court found, "there have been disturbances, problems, and inadequacies in the Oklahoma prison system since the court's last findings" only one year earlier. No. 72-95-C, slip op. at 6 (E.D. Okla. Dec. 30, 1983). The trial court specifically held "four subjects of previous court orders that are still found to be inadequate and not in compliance." *Id.* The defendants were found to have failed to comply with orders dealing with racial segregation and discrimination, court access, and equal protection for women. Inmates were still held in cell houses which had been condemned as unfit for human habitation and ordered closed. Despite these serious problems, the court accepted defendants' promises to take future remedial steps: "[E]ach area of continued violation has been specifically addressed by the State and is subject to a specifically planned remedy." *Id.* The district court ended its active supervision of this case, discharging the court's monitor, but specifically left intact all injunctions in order to secure defendants' promises. *Id.* slip op. at 8. The plaintiffs appealed.

It was petitioners' considered judgment not to appeal the order which left the injunctions in force. Instead, petitioners urged the Court of Appeals to leave the injunctions in place, acknowledging that the injunctions were petitioners' bond upon which the district court had based its decision to end its active supervision. Petitioners urged the circuit:

> [T]his Court may conscientiously affirm the district court's dismissal of supervisory jurisdiction, **particularly** where the district court left in force and effect its prior injunctions as modified.

Battle v. Anderson, No. 84-1026, Brief of Appellees, June 1984 at 104 (emphasis supplied). The Court of Appeals likewise accepted petitioners' promises of future compliance upon the assurance that petitioners' failure to meet those promises could be redressed in proceedings before the district court to enforce the injunctions. *Battle v. Anderson*, 788 F.2d 1421, 1429 (10th Cir. 1986). In the area of racial discrimination and segregation, however, the Court of Appeals held that the district court's findings were inadequate to permit review and, accordingly, remanded the case for further proceedings. *Id.* at 1425.

Petitioners failed to keep their promises of remedial measures. They began using the day rooms at the reception center as open dormitories. The petitioners conceded that it was a dangerous practice which mixed hardened prison veterans with first-time offenders less capable of self-defense in an environment where staff could not adequately protect weaker inmates from injury. (R. 110, Ex. B) Because of such dangers, the practice previously had been condemned by the district court, *Battle*, 447 F. Supp. at 522, and enjoined. No. 72-95-B, slip op. at 4 (E.D. Okla. May 4, 1979). As earlier anticipated by the courts, respondents moved the district court for an order enforcing the injunction against such practices. In response to plaintiffs' enforcement motion and without notice or hearing, the district court dissolved the injunctions *sua sponte*. (R. 120) On appeal, the circuit reversed and remanded the case for a hearing. (R. 158) *Battle v. Fields*,

No. 94-7175, slip op. at 2 (10th Cir. June 27, 1995). Petitioners did not seek a writ of certiorari.

While the case was pending in the Court of Appeals, petitioners resumed using two of the condemned cell houses that had been ordered closed. On remand plaintiffs sought to enforce the injunctions' prohibition against use of the condemned cellhouses.[1] (R. 166)

Also on remand and for the first time in the history of this case, petitioners sought to dissolve the injunctions. Citing Fed.R.Civ.P. 60(b), petitioners moved to dissolve all existing injunctions other than those prohibiting racial segregation and discrimination. (R. 162)

Again, and in contravention of the appellate court's order of remand, the trial court dissolved the injunctions without a hearing. (R. 181) No. 72-95-C, slip op. at 3 (Nov. 15, 1995). In spite of having heard no evidence, the district court made findings concerning the defendants' compliance. *Id.*

On appeal the Tenth Circuit again remanded for an evidentiary hearing on the outstanding matters, including the defendants' Rule 60(b) motion to dissolve the injunctions. *Battle v. Fields*, No. 95-7164 (10th Cir. March 29, 1996). (Petitioners' Appendix A at 4-5) The defendants have now sought a writ of certiorari.

Upon issuance of the Tenth Circuit's mandate, the district court ordered briefs from all parties concerning

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[1] The plaintiffs also sought to enforce orders which enjoined housing three inmates in a cell at one of the women's prisons, the Mabel Bassett Correctional Center. (R. 174).

applicability of the Prison Litigation Reform Act (PLRA) to this pending case. Concurrent with the filing of their brief in the district court, petitioners filed a second motion to dismiss, citing the PLRA, 18 U.S.C. § 3626(b)(2). The trial court has not ruled on the petitioners' motion.

CORRECTIONS OF MISSTATEMENTS IN THE PETITION.

Pursuant to United States S. Ct. Rule 15.2, respondents bring to the Court's attention the following misstatements of fact in the Petition.

The Petition misrepresents the lower court proceedings and petitioners' role in those proceedings. All of the remedial orders entered in this case have been agreed to by officials of the State of Oklahoma, including the 1983 district court order, No. 72-95-C (Dec. 30, 1983), *aff'd*, 788 F.2d 1421 (10th Cir. 1986), which left all of the injunctions intact. Although petitioners now assert the court was without jurisdiction to leave intact the injunctions, they urged the district court to adopt those very injunctions and urged the Court of Appeals to affirm the district court's order. *See* Brief of Appellees, June 1984 at 104.

Petitioners contend that respondents raised "totally new allegations" in the district court proceedings to enforce the injunctions. Petition for Writ of Certiorari at 2, 7. That contention is wrong. The issue of petitioners' use of the condemned cell houses is one of long standing in this case. The issue was first addressed by the district court in 1977. Upon an extensive evidentiary record, conditions in these cell houses were condemned and the court found the cell houses unfit for human habitation.

Battle, 447 F. Supp. at 522-23, and *Battle*, 457 F. Supp. at 723-26.

Petitioners conceded on appeal the sufficiency of the evidence to support the district court's conclusion that the use of these cell houses violated Eighth Amendment standards of decency. *Battle*, 594 F.2d at 792. Moreover, the use of these cell houses was one of the cited failures in compliance the district court criticized in 1983. No. 72-95-C, slip op. at 7 (Dec. 30, 1983). The court's decision to end active supervision was based on petitioners' promises to remedy those failures and, with specific reference to the cell houses, petitioners promised to close them "as soon as feasible." *Id.* An application by the plaintiffs seeking to enforce the order against the use of these cell houses cannot at all be considered raising "totally new allegations."[2]

Citing precisely the finding reversed by the Court of Appeals, petitioners contend that the district court "recogniz[ed]" their compliance with the injunctions. Petition for Writ of Certiorari at 6-7. The district court's conclusion, found to be without sufficient factual support and reversed, is the sole basis for petitioners' "jurisdictional" argument. It is a misstatement of the law of this case and cannot support issuance of the writ.

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[2] Likewise, the issues of disparate treatment of women and the practice of triple celling are not "new issues." Triple celling was enjoined by the court when it eased its order concerning single celling. No. 72-95-C (Jan. 12, 1982). Petitioners agreed in 1979 to remedy the disparate treatment of women, and in 1983, the district court found petitioners were failing to meet that guarantee. No. 72-95-C, slip op. at 7 (Dec. 30, 1983). *See* 788 F.2d at 1425-26.

The Petition offers additional misstatements in an effort to support the district court's dissolution of the injunctions. First, the parties before the trial court were never given notice or an opportunity to be heard, contrary to petitioners' suggestion. *Id.* at 7. What the petitioners present as "notice" was an order to brief a narrow point of law. No. 72-95-C (Sept. 21, 1995). Second, petitioners erroneously suggest that they had demonstrated by a factual record that they "met the appropriate standards for dissolution of the [alleged] out of date injunctions." *Id.* at 6. The record does not support the petitioners' contention that "the system has been determined constitutional since 1982." *Id.* at 2. No facts in the record support that statement. At the same time, respondents' allegations of current unconstitutional conditions, violative of existing injunctions in this case, stand virtually uncontested. The evidentiary record in this case stands as it did in 1983. Since September 1983, the district court has not conducted a hearing or received evidence.

REASONS FOR DENYING THE WRIT

I. ISSUANCE OF PETITIONERS' WRIT IS NOT WARRANTED UNDER SUPREME COURT RULES

Petitioners assert that a grant of their petition is proper because the ruling of the Court of Appeals is "extra-jurisdictional" and in conflict with applicable decisions of this Court. Petition for Writ of Certiorari at 8. Rule 10.1 of the Rules of the Supreme Court advises of the "special and important reasons" that may justify issuance of a writ of certiorari. No such reasons exist.

Here, petitioners do not claim the existence of any conflict among the courts of appeal, or any conflict between the ruling below and any ruling of the courts of the State of Oklahoma. The decision below merely applied settled law to a specific set of factual allegations and, therefore, does not merit plenary review.

Second, the ruling of the Court of Appeals is in fact consistent with prior holdings of this Court. The ruling ordered only that the district court improperly, and contrary to the prior mandate, failed to give the parties notice or conduct an evidentiary hearing that would provide a factual record upon which to review the district court's dissolution of the extant injunctions.[3]

Finally, petitioners assert that the PLRA, enacted after the ruling of the Court of Appeals, must be applied to this pending case, that the Act obviates an evidentiary hearing in the district court, and requires the immediate dissolution of the extant injunctions. Petitioners fail to articulate why this Court should address whether and in what manner this new statute applies to this case. That precise question is pending before the district court[4] and

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[3] In fact, the decisions of the Court of Appeals throughout the course of this litigation demonstrate that the court consistently has deferred to the judgments of state officials to the maximum extent possible, with the goal of withdrawing the courts' supervision as soon as the facts and law allow. Contrary to the implication in the Petition, the rulings of the Court of Appeals presaged recent decisions of this Court regarding the role of the federal courts in institutional reform litigation.

[4] On July 10, 1996, petitioners, respondents and plaintiff-intervenor filed simultaneous briefs on the issue with the United States District Court for the Eastern District of Oklahoma, No. 72-95-B.

has not yet been presented to the Court of Appeals in the context of this case. This fact alone suggests the propriety of denying the writ.

II. THE COURT OF APPEALS APPLIED THE CORRECT LEGAL STANDARDS

Two guiding principles regarding the extant injunctions in this case have always been (1) the right of the respondents to due process in the enforcement of the relief awarded by the court in this action, and (2) the importance of a full record to support any modification of the equitable relief to which respondents proved they were entitled under the Constitution. In its review, the Court of Appeals acknowledged and gave deference to each of these fundamental legal principles.

A. SCOPE OF JUDICIAL REVIEW

The Court of Appeals construed respondents' motion in the district court to enforce the existing injunctions as a motion filed pursuant to Fed.R.Civ.P. 60(b)(5). It is settled law that the district court's have broad discretion under Rule 60(b)(5) to enforce or modify their previous judgments, and that such orders are reviewed only for an abuse of discretion.[5] The Tenth Circuit has consistently

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[5] The scope of review in the circuit courts of appeal is not in conflict; all circuits review district court orders under Fed.R.Civ.P. 60(b) using an abuse of discretion standard. *E.g., Fiore v. Washington County Mental Health Center*, 960 F.2d 229, 234 (1st Cir. 1992); *Still's Pharmacy, Inc. v. Cuomo*, 981 F.2d 632, 637 (2d Cir. 1992); *Central W. Rental Co. v. Horizon Leasing, Div. of*

utililized an abuse of discretion standard in reviewing the decisions of the district courts under Fed.R.Civ.P. 60(b). *E.g., Elsken v. Network Multi-Family Sec. Corp.*, 49 F.3d 1470, 1476 (1995); *Cox v. Sandia Corp.*, 941 F.2d 1124, 1125 (1991). It was under this limited scope of review that the Court of Appeals found, on the specific facts before it, that the decision of the district court to deny respondents' motion and dissolve the existing injunctions without notice or a hearing "constitutes an abuse of the district court's discretion." *Battle v. Fields*, No. 94-7175, slip op. at 2 (June 27, 1995) (1995 U.S.App. LEXIS 15927). Thus, the Court of Appeals conducted a proper review of the district court's decision.

B. THE COURT OF APPEALS CORRECTLY ORDERED AN EVIDENTIARY HEARING

Petitioners claim that the Court of Appeals "fail[ed] to recognize that the district court has no power to continue to enforce post-dismissal injunctions." Petition for Writ of Certiorari at 2. That claim is legally insupportable,

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Horizon Financial, F.A., 967 F.2d 832, 836 (3d Cir. 1992); *In re Burnley*, 988 F.2d 1, 3 (4th Cir. 1992); *Aucoin v. K-Mart Apparel Fashion Corp.*, 943 F.2d 6, 8 (5th Cir. 1991); *Davis v. Jellico Community Hosp.*, 912 F.2d 129, 132-33 (6th Cir. 1990); *Rodgers v. Wood*, 910 F.2d 444, 449 (7th Cir. 1990); *Printed Media Serv. v. Solna Web, Inc.*, 11 F.3d 838, 842 (8th Cir. 1993); *Richmark Corp. v. Timber Falling Consultants, Inc.*, 937 F.2d 1444, 1448 (9th Cir. 1991); and *Delancy v. St. Paul Fire & Marine Ins. Co.*, 947 F.2d 1536, 1545 (11th Cir. 1991).

and has been properly rejected twice by the Court of Appeals.[6]

The Court of Appeals properly required the district court to address the allegations that petitioners are violating the existing injunctions. As the Court of Appeals had stated earlier, "[t]he district court is the only court equipped to test evidentiary compliance and the only forum in which to raise any allegations of continuing deficiencies." *Battle v. Anderson*, 708 F.2d 1523, 1539 (10th Cir. 1983) (quotation omitted). Moreover, the Court of Appeals correctly determined that a factual record is no less necessary when legal standards change:

> To the extent that changed legal standards apply, one of the major purposes of a factual presentation is to establish on a point by point basis how such standards do or do not affect the existing injunctions. The resulting analysis and disposition by the court will be directed to a relevant factual record. The evidence, together with the findings and conclusions of the district court, will then provide the record necessary for appellate review. It is the absence of such a record that prompted our remand in the first place.

Battle v. Fields, Nos. 95-7164, 95-7013 slip op. at 5.

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[6] Respondents have twice attempted to assert this argument and have twice been rejected. *Battle*, 708 F.2d at 1539; Nos. 95-7164 and 96-7013 (10th Cir. Mar. 29, 1996). "It is too late in the day in this litigation to dispute the existence and vitality of injunctions affecting the parties." Nos. 95-7164 and 96-7013, slip op. at 4.

Petitioners' desire to end supervision of Oklahoma's prison system cannot be achieved by simply denying the equitable power of the court to supervise the existing injunctions. This Court has cautioned that "[a] court's discretion to order the incremental withdrawal of its supervision in a school desegregation case must be exercised in a manner consistent with the purposes and objectives of its equitable power." *Freeman v. Pitts*, 503 U.S. 467, 491, 112 S.Ct. 1430, 1446, 118 L.Ed.2d 108, 134 (1992). That direction is equally applicable to other institutional reform litigation such as this action involving prison conditions. *See Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 112 S.Ct. 748, 116 L.Ed.2d 867 (1992).

In determining whether modification of an existing decree in institutional reform litigation is proper, this Court has set out a specific process requiring that defendants prove (1) they have complied with the court orders, and (2) their actions demonstrate that continued judicial supervision is unnecessary to guarantee their future compliance with constitutional standards. *Board of Educ. of Okla. City v. Dowell*, 498 U.S. 237, 249, 111 S.Ct. 630, 637, 112 L.Ed.2d 715, 729 (1991); and *Freeman v. Pitts*, 503 U.S. at 492, 112 S.Ct. at 1446, 118 L.Ed.2d at 134-35. This Court has recognized that the process in each case "turns on a careful assessment of the facts." *Freeman v. Pitts*, 503 U.S. at 474, 112 S.Ct. at 1437, 118 L.Ed.2d at 124. This Court observed further that "[p]artial relinquishment of judicial control, where justified by the facts of the case, can be an important and significant step in fulfilling the district court's duty to return the operations and control of [the institution] to local authorities." *Id.* at 489, 112 S.Ct. at 1445, 118 L.Ed.2d at 133.

Here, the Court of Appeals' decision merely acknowledged that a decision to relinquish judicial control cannot be made in the absence of a factual record. Because the Court of Appeals correctly found that the district court had abused its discretion in failing to hold an evidentiary hearing, it properly vacated the order of the district court and remanded the action for further proceedings. Petitioners' desire to have obtained a different result when the proper legal standard was applied by the Court of Appeals to the record provides no basis for the writ.

III. THE PETITION SEEKS TO REVERSE A 1983 ORDER WHICH PETITIONERS NEITHER CONTESTED NOR APPEALED

In 1983 the district court found wide-spread violations of its orders. *Battle v. Anderson*, No. 72-95-C (E.D. Okla. Dec. 30, 1983). Repeatedly, the court deferred to petitioners' plans and promises to remedy those deficiencies. The court found the cells in Oklahoma's prisons remained racially segregated. The court, though, was satisfied by the "Defendants' Plan . . . approved and ordered its adoption." *Id.* at 6. As for equal protection guarantees for women, which were found inadequate in areas of programs, medical care and exercise, the court found "specific remedies outlined in the Defendants' plan." *Id.* The use of the condemned cell houses was to be remedied by "assurances from Director Meachum and Governor Nigh" that they would be "vacated as soon as feasible." *Id.* Ultimately, it was the defendants' plans and promises to comply in the future with the Constitution that the

court found acceptable, not the prison conditions then existing. *Id.* at 9. The district court accepted these assurances and ended its active oversight, leaving the outstanding injunctions in place to secure those promises. *Id.* at 10.

The respondents appealed the 1983 order. Petitioners did not contest the order and urged that the Court of Appeals could "conscientiously affirm" the district court's order which relied on promises of compliance because the injunctions were still in full force and effect. *See Battle*, No. 84-1026, Brief of Appellees, June 1984 at 104. The Court of Appeals affirmed the dismissal of active supervision as to all issues, except racial discrimination, and affirmed the continuation of the injunctions. *Battle v. Anderson*, 788 F.2d at 1429. Petitioners did not appeal that decision.

Thirteen years later, petitioners now seek review of the 1983 decision entered at their urging, using the Circuit's order of remand as a guise. Even if that decision was properly before this Court for review, the order was clearly consistent with the remedial authority of the district court. The injunctions that remain in effect were proposed by defendants and entered by the court to remedy admitted constitutional violations. The promises of remedial actions, which were accepted by the district court in 1983, were directed specifically at achieving compliance with those injunctions. The order leaving the injunctions in force, secured those promises. That remedial order was well within the authority of the court. *Miliken v. Bradley*, 433 U.S. 267, 282, 97 S.Ct. 2749, 2758, 53 L.Ed.2d 745, 757 (1977) ("[T]he remedy does not exceed

the violation if the remedy is tailored to cure the condition that offends the Constitution.") *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 15, 91 S.Ct. 1267, 1276, 28 L.Ed.2d 554, 566 (1971) ("The essence of equity [is] the power . . . to mold each decree to the necessities of the particular case.") There can be little doubt that the district court order in 1983 was designed to achieve a lasting cure for the wide-spread violations which continued to exist. A timely appeal by these petitioners from the 1983 order would have failed. Their attempt to achieve a review today should also fail.

IV. THE HISTORY OF THIS CASE EVIDENCES LIMITED AND APPROPRIATE FEDERAL SUPERVISION

The record in this case does not provide petitioners an adequate vehicle for the central proposition petitioners urge on this Court. Contrary to the petitioners' assertions, this case is not an example of the "unwarranted perpetuation" of court supervision of a state institution. Petition for Writ of Certiorari at 2.[7]

In 1978 the district court found the conditions in old cell houses in two Oklahoma prisons to be unfit for human habitation. *Battle*, 457 F. Supp. at 723-25. The court also found other serious health, safety and sanitation problems in Oklahoma's prison system violated the

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[7] The record in fact speaks to the constitutional dangers of a federal court's excessive deference to state officials. During the past thirteen years no hearings have been held, no evidence has been considered, and respondents have waited two years to be heard on allegations that the injunctions are being violated.

Eighth Amendment. *Battle*, 457 F. Supp. at 724. Petitioners did not challenge those findings on appeal, but rather, conceded the unconstitutionality of the identified conditions. *Battle*, 594 F.2d at 792. Consistent with procedures recently found by this Court to be required in institutional reform litigation, *Lewis v. Casey*, 518 U.S. ___, ___, 116 S.Ct. 2174, 2185, 135 L.Ed.2d 606, 625 (1996), the Court of Appeals allowed the petitioners to propose their own remedy for these constitutional violations. *Battle*, 594 F.2d at 793. The State's proposed remedial plan was adopted verbatim, including the requirement that the condemned cell houses be closed by January 1982. *Battle*, No. 72-95-C, slip op. at 3-4 (E.D. Okla. May 4, 1979).

In 1983 the condemned cell houses were still occupied and the district court found additional violations of the court's orders in virtually all areas of Oklahoma's prison system. *Battle*, No. 72-95-C, slip op. at 6-7 (E.D. Okla. Dec. 30, 1983). Again, the district court deferred to State officials, and their promises to end these violations of the Constitution "as soon as feasible" were fully accepted as adequate. *Id.* Petitioners urged on appeal that the court could "conscientiously" accept such promises, because the injunctions remained intact. *Battle*, No. 84-1026, Brief of Appellees, June 1984 at 104.

Petitioners do not contest that they have reopened these dangerous cell houses[8] in direct violation of their

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[8] The petitioners have failed in their commitments in other important respects, as detailed in the *Plaintiffs Report to the Court and Parties*, Mar. 11, 1994 (R. 85). These failures include failures in basic sanitation and health as well as violations of orders relating to equal protection for women inmates,

commitments to the court and the court's injunctions. An inmate recently died as the result of unsafe wiring, one of the dangerous conditions that necessitated the court's 1979 order closing the cell houses. *Battle*, 457 F. Supp. at 724. R.168 at 5. Today, inmates are still held in these condemned facilities and remain in imminent danger due to the very conditions which required the closing of the cell houses 17 years ago. *Id.*

Throughout the course of this litigation, the courts have deferred to the judgments and requests of State officials. The petitioners' promises of reform have been accepted at face value and State officials have been afforded ample opportunity to achieve compliance. In spite of this, many of the same serious constitutional violations identified nearly two decades ago remain. The time has long passed when the petitioners' failures to comply with the Constitution and with the court's remedial orders should be accepted.

> Courts certainly have a responsibility to scrutinize claims of cruel and unusual confinement, and conditions in a number of prisons, especially the older ones, have justly been described as 'deplorable' and 'sordid.' When conditions of confinement amount to cruel and unusual punishment, federal courts will discharge their duty to protect constitutional rights.

Rhodes v. Chapman, 452 U.S. 337, 352, 101 S.Ct. 2392, 2402, 69 L.Ed.2d 59, 73 (1981) (citations and internal quotation

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continued racial segregation in cell assignments, fire safety and medical care.

marks omitted). The hearing ordered by the Tenth Circuit Court of Appeals should be held.

V. THE ISSUE OF THE APPLICATION OF THE PRISON LITIGATION REFORM ACT IS NOT RIPE FOR REVIEW

The justiciability of a controversy is a necessary predicate to this Court's exercise of its article III power to adjudicate only actual cases or controversies. U.S. Const. art. III, § 2; *See Aetna Life Ins. Co. v. Hayworth*, 300 U.S. 227, 57 S.Ct. 461, 81 L.Ed. 617 (1937). Justiciability demands that a question be ripe for adjudication. *Communist Party v. Subversive Activities Control Bd.*, 367 U.S. 1, 71, 81 S.Ct. 1357, 1397, 6 L.Ed.2d 625, 674 (1961). This Court has consistently reiterated that it will decline to hear cases prematurely, a concept inherent in the principle of ripeness. *E.g., Renne v. Geary*, 501 U.S. 312, 315-16, 111 S.Ct. 2331, 2336, 115 L.Ed.2d 288, 298 (1991).

Cases challenging the application of new legislation are premature when it is not clear whether, or in what manner, the statute will be applied to the claimant. *Id. See also Toilet Goods Ass'n v. Gardner*, 387 U.S. 158, 163-64, 87 S.Ct. 1520, 1525, 18 L.Ed.2d 697, 701-02 (1967) (challenge to agency regulation premature before it can be determined how and in what manner regulation would be applied to claimant). Here, petitioners assert that the PLRA, enacted after the decision of the Court of Appeals, is applicable to this case and requires the dissolution of the extant injunctions. That issue is not, however, ripe for this Court's review. Procedurally, the issue is pending before the district court. Neither the district court nor the

court of appeals has ruled whether and in what manner the PLRA is applicable to this case. As a matter of prudence, the question whether the new statute is applicable to this case should await the decisions of the lower courts. *E.g., Landgraf v. USI Film Products*, 511 U.S. 244, 114 S.Ct. 1483, 1488, 128 L.Ed.2d 229 (1994) (certiorari to review application of new federal statute granted after court of appeals affirmed decision of the district court that the statute was not to be applied to pending cases).[9]

Moreover, the lower courts should first address the numerous issues presented by application of the PLRA to this case despite the importance of these issues. The nature and extent of the changes wrought by the PLRA unquestionably raise serious constitutional questions. However, the exercise of this Court's discretion to grant a writ to decide important questions of federal law is

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[9] A panel of the Tenth Circuit has ruled that one section of the Act should be applied to pending cases. *Green v. Nottingham*, No. 96-511 (July 10, 1996) (1996 WL 384762). The court reached that conclusion without "the benefit of adversarial presentation, consider[ing] the important legal and factual issues inherent [in its application]." *Id.* (1996 WL 384762 at 6) (Kelly, J., dissenting). The district court in this case is now considering numerous issues not raised or considered in *Green* concerning the retroactive application of the Act in this case. Other lower federal courts are presently defining and analyzing the issues presented by this Act. *See Carty v. Farrelly*, No. CIV-94-78 (D.V.I. July 17, 1996); *Gate v. Gomez*, No. CIV-S-87-1636-LKK (E.D. Cal. July 23, 1996); *Benjamin v. Jacobson*, No. 75-CIV-3073 (H.B.) (S.D.N.Y. July 23, 1996); and, *Alexander v. Boyd*, C/A No. 3:90:3062-17 (D.S.C. May 29, 1996). These recent decisions, nevertheless, represent only the beginning of the courts' refinement of the issues presented by the PLRA.

guided by twin concerns that the Court neither unnecessarily address constitutional questions nor address such questions prematurely. "No rule of practice of this Court is better settled than 'never to anticipate a question of constitutional law in advance of the necessity of deciding it.' " *Communist Party v. Subversive Activities Control Board*, 367 U.S. at 71, 72; 81 S.Ct. at 1397, 6 L.Ed.2d at 674 (citations omitted). Throughout this Court's history, it has postponed the decision of difficult and important questions of constitutional law so long as a "reasonable alternative" exists. *Kovacs v. Brewer*, 356 U.S. 604, 607, 78 S.Ct. 963, 965, 2 L.Ed.2d 1008, 1011 (1958) (the Court will postpone the decision of difficult and important questions of constitutional law so long as a reasonable alternative exists); *West v. Atkins*, 487 U.S. 42, 48, 108 S.Ct. 2250, 2255, 101 L.Ed.2d 40, 49 (1988) (the Eighth Amendment question suggested by the parties should be addressed first by the lower courts when it is unnecessary for the Supreme Court to decide the issues in the case before it.); *Asbury Hospital v. Cass County*, 326 U.S. 207, 213-14, 66 S.Ct. 61, 64, 90 L.Ed. 6, 14 (1945). As the Court has explained, "this principle is based upon the realization that, by the very nature of the judicial process, courts can most wisely determine issues precisely defined by the confining circumstances of particular situations," *Communist Party v. Subversive Activities Control Bd.*, 367 U.S. at 72, 81 S.Ct. at 1357, 6 L.Ed.2d at 674-75, and, with respect to the questions of a statute's constitutionality as applied, after the lower courts have had the opportunity to refine the issues through statutory construction. *United States v. Petrillo*, 332 U.S. 1, 67 S.Ct. 1538, 91 L.Ed. 1877 (1947). It

is a reasonable alternative to allow the issues presented by the PLRA to be refined by the lower courts.

The application of the PLRA to this case, moreover, has neither been determined by the lower courts nor is inevitable. These difficult and important questions of constitutional law should be addressed first by the lower courts and, in only those cases where it has been decided that the new Act is applicable. An analysis in this case of the constitutional validity of the PLRA, prior to determining whether the Act applies to this case, would be tantamount to rendering an advisory opinion proscribed by article III. *Renne v. Geary*, 501 U.S. at 323-24, 111 S.Ct. at 2440, 115 L.Ed.2d at 302-03.

CONCLUSION

Based on the foregoing, the respondents respectfully request that the Petition for Writ of Certiorari be denied.

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No. 95-2090

In the Supreme Court of the United States

OCTOBER TERM, 1995

LARRY FIELDS, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS, ET AL., PETITIONERS

v.

BOBBY BATTLE, ETC., AND UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the court of appeals erred in remanding this case to the district court for an evidentiary hearing with respect to petitioners' motion to terminate previously-entered permanent injunctions.

2. Whether Section 802(a) of the Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, Tit. VIII, 110 Stat. 1321-66 (to be codified at 18 U.S.C. 3626), requires termination of the injunctions.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	2
Argument	10
Conclusion	16

TABLE OF AUTHORITIES

Cases:

Battle v. *Anderson*:	
564 F.2d 388 (10th Cir. 1977)	2
614 F.2d 251 (10th Cir. 1980)	2
708 F.2d 1523 (10th Cir. 1983), cert. dismissed, 465 U.S. 1014 (1984)	4-5, 9
788 F.2d 1421 (10th Cir. 1986)	6, 9, 10, 13
376 F. Supp. 402 (E.D. Okla. 1974)	2, 3
447 F. Supp. 516 (E.D. Okla. 1977)	2, 3, 4
No. 72-95-C (E.D. Okla. Dec. 30, 1983), aff'd in part, vacated in part, 788 F.2d 1429 (10th Cir. 1986)	5
Battle v. *Fields*:	
59 F.3d 178 (10th Cir. 1995)	7
No. 72-95-C (E.D. Okla. Nov. 17, 1994), vacated, 59 F.3d 178 (10th Cir. 1995)	7
Board of Education v. *Dowell*, 498 U.S. 237 (1991)	10-11, 12
Brotherhood of Locomotive Firemen v. *Bangor, & Aroostock R.R.*, 389 U.S. 327 (1967)	14
Freeman v. *Pitts*, 503 U.S. 467 (1992)	10, 11, 12
Green v. *County School Board*, 391 U.S. 430 (1968)	5
Hamilton-Brown Shoe Co. v. *Wolf Bros. & Co.*, 240 U.S. 251 (1916)	14
Hutto v. *Finney*, 437 U.S. 678 (1978)	10

Cases—Continued: Page

Lewis v. *Casey*, 116 S. Ct. 2174 (1996) 12
Milliken v. *Bradley*, 433 U.S. 267 (1977) 11
Missouri v. *Jenkins*, 115 S. Ct. 2038 (1995) 11, 12
NLRB v. *Sears, Roebuck & Co.*, 421 U.S. 132 (1975) 15
Rufo v. *Inmates of Suffolk County Jail*, 502 U.S. 367 (1992) 10, 13
United States v. *Parke, Davis & Co.*, 365 U.S. 125 (1961) 11
Virginia Military Institute v. *United States*, 508 U.S. 946 (1993) 13-14

Constitution, statutes and rules:

U.S. Const.:
Amend. I 2, 3
Amend. VIII 2, 3, 4, 7
Amend. XIV (Due Process Clause) 2
Omnibus Consolidated Recissions and Appropriations Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 15
Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, Tit. VIII, 110 Stat. 1321-66:
§ 802(a), 110 Stat. 1321-68 (to be codified at 18 U.S.C. 3626(b)(2)) 9, 14
§ 802(a), 110 Stat. 1321-68 (to be codified at 18 U.S.C. 3626(b)(3)) 14, 15
42 U.S.C. 1983 2
42 U.S.C. 2000h-2 2
Fed. R. Civ. P.:
Rule 60(b) 13
Rule 60(b)(5) 7

Miscellaneous:

R. Stern, E. Greeman, & S. Shapiro, *Supreme Court Practice* (7th ed. 1993) 14

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A5) is unpublished, but the decision is noted at 81 F.3d 172 (Table). The opinion of the district court (Pet. App. B1-B4) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on March 29, 1996. The petition for a writ of certiorari was filed on June 27, 1996. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Respondent Bobby Battle initiated this class action in 1972 on behalf of himself and all other inmates incarcerated within the Oklahoma State Penitentiary (OSP) system. The complaint alleged that petitioners' operation of the State's prisons deprived the class of rights secured by the First, Eighth, and Fourteenth Amendments to the Constitution, in violation of 42 U.S.C. 1983. *Battle* v. *Anderson*, 376 F. Supp. 402, 407 (E.D. Okla. 1974).

In July, 1973, public attention was focused on the serious problems within the Oklahoma penal system because of a riot at the State Penitentiary at McAlester, Oklahoma. *Battle* v. *Anderson*, 614 F.2d 251, 253 (10th Cir. 1980).[1] After the riot, on March, 5, 1974, the United States intervened in the action pursuant to 42 U.S.C. 2000h-2. *Battle* v. *Anderson*, 614 F.2d at 253; *Battle* v. *Anderson*, 564 F.2d 388, 392 (10th Cir. 1977). The United States' initial complaint in intervention alleged that respondents were operating the OSP on a racially segregated basis with respect to housing, work assignments, and other privileges and activities. Gov't C.A. App. 96-97.[2]

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[1] The district court subsequently determined that petitioners' "neglect, apathy and deliberate disregard for human decency and rights contributed directly to the tragic loss of lives and $20 million in state property damages" that resulted from the riot. *Battle* v. *Anderson*, 447 F. Supp. 516, 517 (E.D. Okla. 1977).

[2] The United States subsequently amended its complaint to allege, in addition, arbitrary disciplinary action against inmates of all races, in violation of the Due Process Clause of the Fourteenth Amendment; cruel and unusual conditions of confinement, in violation of the Eighth Amendment; unreasonable restrictions on inmate religious practices and correspondence,

After a bench trial in March, 1974, the district court held that numerous policies, practices, and conditions throughout the OSP system violated the Constitution. Specifically, the court held that petitioners had violated, and continued to violate, the Eighth Amendment's prohibition against cruel and unusual punishment by imposing on prisoners unreasonable and excessive use of chemical agents as a punitive measure, inadequate medical care, and prolonged periods of solitary confinement in unsanitary and dangerous conditions. The court further found that petitioners were engaging in racial segregation and discrimination with regard to inmate housing, discipline, and work assignments; that petitioners' disciplinary procedures violated due process; that OSP restrictions on inmates' receipt of correspondence and periodicals violated the First Amendment; that petitioners were violating the inmates' freedom of religion; and that petitioners were not providing inmates constitutionally adequate access to the courts. *Battle* v. *Anderson*, 376 F. Supp. at 408-428. The court ordered the cessation of the identified unlawful activities and instructed petitioners to formulate a particularized remedial plan. *Id.* at 428-437.

The district court conducted subsequent hearings regarding petitioners' practices and remedial efforts between 1974 and 1977. *Battle* v. *Anderson*, 447 F. Supp. at 517. In 1977, the court concluded, in addition to its prior findings, that overcrowded conditions at certain institutions, combined with inadequate sani-

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in violation of the First Amendment; and infringement of inmates' right of access to the courts. *Battle* v. *Anderson*, 376 F. Supp. at 407-408.

tary, health, and fire protections, violated the Eighth Amendment and "present[ed] an immediate and intolerable threat to the safety and security of inmates, prison personnel and the people of the State of Oklahoma with attendant monetary losses and costs of staggering proportions." *Ibid.* The court also identified numerous instances of non-compliance by petitioners with the court's prior order, and willful recalcitrance by OSP officials. *Id.* at 517-519, 524.

As a result of those findings, the court adopted a remedial order requiring, *inter alia*, gradual population reductions in particular institutions; minimum per-inmate space requirements; and compliance by petitioners with state and federal water and sewage laws. 447 F. Supp. at 526.

In 1979, petitioners submitted to the district court a proposed plan to remedy the continuing violations and non-compliance identified by the court in prior proceedings. In that proposal, petitioners agreed to, among other things, limit the number of inmates per cell at certain institutions; renovate or close certain institutions; bring water, sewage, and electrical systems into compliance with state laws; and bring covered institutions into compliance with the standards of the American Correctional Association and the American Public Health Association. Petitioners further agreed to comply with the district court's prior orders regarding racial segregation, medical care, and access to the courts. Gov't C.A. Br. 4-5. The district court entered petitioners' proposed plan as an order on May 4, 1979. *Id.* at 4; Gov't C.A. App. 132.

2. The court of appeals first addressed the question of the district court's continuing jurisdiction in 1983. *Battle* v. *Anderson*, 708 F.2d 1523

(10th Cir. 1983), cert. dismissed, 465 U.S. 1014 (1984). There, the court observed that "present conditions, as described by the district court, appear constitutionally adequate under the standards set forth in *Rhodes* [v. *Chapman*, 452 U.S. 337 (1981)]." *Id.* at 1537. The court of appeals further held that the district court should retain jurisdiction over the case "until it has eliminated the constitutional violation 'root and branch,'" *id.* at 1538 (quoting *Green* v. *County School Board*, 391 U.S. 430, 438 (1968)), and that the district court "should exercise supervisory power over the suit until it can say with assurance not only that eighth amendment violations do not presently exist but that there is no reasonable expectation that unconstitutional conditions will recur." *Battle* v. *Anderson*, 708 F.2d at 1537.

On June 17, 1983, petitioners submitted a proposed "Plan of Measures to be Taken to Assure Continued Constitutionality of Oklahoma's Prisons." See Gov't C.A. App. 17. In a December 30, 1983, opinion and order, the district court approved and adopted the plan. *Battle* v. *Anderson*, No. 72-95-C (E.D. Okla. Dec. 30, 1983); Gov't C.A. App. 18. Although it found that "disturbances, problems and inadequacies" persisted in the OSP system (Gov't C.A. App. 21), and that petitioners had failed to comply with numerous aspects of its prior orders (*id.* at 21-23), the court held that petitioners were not currently violating the Constitution, and that no reasonable expectation existed "that unconstitutional practices will recur." *Id.* at 23, 24. The court "dismissed th[e] case in its entirety," but expressly held that "[a]ll of this court's orders and injunctions as modified heretofore remain in full force and effect." *Id.* at 24.

The court of appeals affirmed the dismissal, except as it pertained to claims of racial segregation and discrimination. *Battle* v. *Anderson*, 788 F.2d 1421 (10th Cir. 1986).[3] As to those claims, the court remanded to the district court for further proceedings. In affirming the dismissal of the remaining claims, the court of appeals observed that "it is unmistakably clear that the orders and injunctions protecting the inmates against constitutional violations, as previously modified, were in no way intended to be relaxed and that they remain in full force and effect." *Id.* at 1428 n.5. The court further noted that "plaintiffs may by further proceedings in the district court seek relief from any violations of those previous orders and injunctions protecting their constitutional rights." *Id.* at 1429.

3. On March 8, 1994, the plaintiff class filed a "Report to the Court and the Parties on the Status of Compliance," in which it alleged that various conditions and practices within the OSP system violated portions of the extant injunctions. Gov't C.A. Br. 6.[4]

In October, 1994, the class filed a motion to secure compliance with the injunctive orders. Gov't C.A. Br.

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[3] The district court had dismissed the aspects of the injunction pertaining to racial segregation, notwithstanding its finding that "[r]acial integration of the occupants of double cells [was] almost nonexistent in the Oklahoma prison system." *Battle* v. *Anderson*, 788 F.3d at 1425.

[4] The report alleged, for example, that petitioners were housing 12,234 inmates in facilities designed to accommodate a maximum of 8,905 inmates. Gov't C.A. Br. 6-7. The report also averred that petitioners had returned to a pattern of improper disciplinary practices, and alleged a recurrence of the water, fire-safety, sewage, and food preparation hazards that the court had identified in its prior opinions. *Id.* at 7.

7-8. Without affording the class notice or a hearing, the district court denied the motion and, *sua sponte*, terminated the injunctions and its "supervisory jurisdiction," with respect to all areas other than racial segregation. *Battle* v. *Fields*, No. 72-95-C (E.D. Okla. Nov. 17, 1994), slip op. 15; Gov't C.A. App. 47. In so doing, the court held, *inter alia*, that overcrowding and other conditions contrary to the court's orders did not violate the Eighth Amendment (*id.* at 36-44), and that the OSP system had "reached permanent achievement of remedial objectives." *Id.* at 46.

The court of appeals vacated the order and remanded the case for further proceedings. *Battle* v. *Fields*, 59 F.3d 178 (10th Cir. 1995) (Table). Gov't C.A. App. 53-54. Construing the class's motion in the district court as one filed pursuant to Federal Rule of Civil Procedure 60(b)(5), the court of appeals held that the district court's summary disposition of the motion was a "[f]ailure to afford due process protections [and, therefore,] constitute[d] an abuse of the district court's discretion." Gov't C.A. App. 54. The court of appeals' order further provided that "[o]n remand, the district court shall hold a hearing to determine the issues raised by plaintiffs' motions and to determine whether the existing injunctions should be dissolved." *Ibid.*

4. On remand, the district court directed the parties to file briefs "on the issues of whether or not this court should dissolve the prior injunctions in this case as a matter of law." Pet. App. B2. In their filing, the plaintiff class alleged "systemwide violations" of the existing injunctions and contended that the court of appeals' remand entitled them to an evidentiary hearing regarding present conditions at the covered facilities. Gov't C.A. App. 63. The United

States similarly argued that an evidentiary hearing was necessary to facilitate the "inherently complex and fact-intensive inquiry" into the class's allegations, and to determine whether the injunctions should be dissolved. *Id.* at 75. Petitioners moved to dissolve the injunctions and to dismiss the case. See Pet. App. A4-A5.

The district court first concluded that "oral argument and an evidentiary hearing are unnecessary." Pet. App. B2.[5] It then readopted the findings it made in its November 17, 1994 order, "dissolv[ed] the prior injunctions entered herein, and dismiss[ed] this case, except for the Fourteenth Amendment racial segregation issue originally remanded to this court by the Circuit Court in 1986." *Id.* at B4.

5. The court of appeals again vacated the district court's order and remanded the case "for a full and fair evidentiary hearing on the plaintiffs' motion to enforce the injunctions and on the defendants' motion * * * to dissolve the injunctions and dismiss the case." Pet. App. A4-A5.

The court of appeals rejected petitioners' contention that the district court's 1983 finding that then-existing prison conditions comported with the Constitution terminated the case. It observed that the district court's 1994 and 1995 orders recognized the continuing validity of the injunctions, and that the

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[5] In the court's view, "[i]f [it] conducted further evidentiary hearings in accordance with the prior injunctions, the proceedings would necessarily require a retrial of the original case, based on present conditions, but using outdated standards." Pet. App. B3. The court further stated that "[i]f [it] is required to conduct further evidentiary hearings, modification of the prior injunctions will be necessary to comport with existing caselaw." *Ibid.*

court of appeals "previously affirmed the district court's continuing jurisdiction over this litigation and * * * explicitly recognized the continuing viability of the injunctions entered by the [district] court." Pet. App. A3 (citing *Battle* v. *Anderson*, 788 F.2d at 1421, 1428 n.5; *Battle* v. *Anderson*, 708 F.2d at 1538-1539 n.4).

The court also rejected the district court's conclusion that changed legal standards made an evidentiary hearing unnecessary. It observed that "[t]o the extent changed legal standards apply, one of the major purposes of a factual presentation is to establish on a point by point basis how such standards do or do not affect the existing injunctions." Pet. App. A4.[6]

Finally, observing that the district court's conclusion that an evidentiary hearing would be futile created "[t]he appearance, not the fact, of bias," the court of appeals ordered that the case be assigned to a new judge on remand. Pet. App. A5.

6. On July 8, 1996, petitioners filed in the district court a motion to terminate all prospective relief pursuant to the "Immediate Termination of Prospective Relief" provision of Section 802(a) of the Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, Tit. VIII, 110 Stat. 1321-68 (to be codified at 18 U.S.C. 3626(b)(2)), which was enacted on April 26, 1996. Defendants' Brief on Applicability of PLRA and Motion to Dissolve Injunctions and Terminate All

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[6] In remanding the case, the court observed that "[o]bviously, the hearing will be limited to the issues raised by the parties' filings and cannot be used by the plaintiffs to expand the present case or, in effect, bring a new action." Pet. App. A5.

Prospective Orders with Brief, *Battle* v. *Fields*, No. CIV-72-95-B (E.D. Okla. filed July 8, 1996).

ARGUMENT

Contrary to the court of appeals' explicit instructions, the district court dismissed injunctions designed to remedy identified constitutional violations, without conducting an evidentiary hearing, and without engaging in the fact-intensive inquiry that this Court's decisions require. See, *e.g.*, *Freeman* v. *Pitts*, 503 U.S. 467 (1992); *Rufo* v. *Inmates of Suffolk County Jail*, 502 U.S. 367 (1992); *Board of Education* v. *Dowell*, 498 U.S. 237 (1991). The court of appeals' order remanding the case to allow such an inquiry was correct. Petitioners' contentions regarding the Prison Litigation Reform Act are currently pending before the district court, and should be considered by that court in the first instance.

1. Petitioners' principal contention (Pet. 9) is that the court of appeals' "remand of the case and instruction to the district court to hold an evidentiary hearing went beyond the subject matter jurisdiction and was extra-jurisdictional." That contention is incorrect.

The district court, in its 1983 decision, expressly held that "[a]ll of [its] orders and injunctions as modified heretofore remain in full force and effect." Gov't C.A. App. 24. The court of appeals relied on that aspect of the district court's holding in affirming the decision, *Battle* v. *Anderson*, 788 F.2d at 1428 n.5, 1429, and the injunctions have remained in effect since that time. Where, as here, a party alleges violations of an existing injunctive order, the district court clearly possesses jurisdiction to consider that allegation. See, *e.g.*, *Board of Education* v. *Dowell*,

498 U.S. at 246, 250; cf. *Hutto* v. *Finney*, 437 U.S. 678, 690 (1978). Nor does that jurisdiction dissipate because the court has earlier found that the defendant's affirmative unlawful conduct has ceased. See *Board of Education* v. *Dowell*, 498 U.S. at 248 (courts' remedial authority extends to, *inter alia*, remedying the effects of past unlawful conduct); *Freeman* v. *Pitts*, 503 U.S. at 491 (same); *Milliken* v. *Bradley*, 433 U.S. 267, 280-282 (1977) (same); see also *United States* v. *Parke, Davis & Co.*, 365 U.S. 125, 126 (1961) (ordering district court to "retain the case on the docket for future action in the event the Government applies for further relief from an alleged resumption by [the defendant] of illegal activity").[7]

Institutional injunctions are necessarily temporary in nature, having as their ultimate goals both the remediation of unconstitutional conditions and the return of control to state and local officials. *Missouri* v. *Jenkins*, 115 S. Ct. 2038, 2049 (1995). Nonetheless, in cases such as this one, in which a court has identified systemic constitutional viola-

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[7] Petitioners characterize the plaintiff class's claims of noncompliance as "new allegations." Pet. 13. Those claims, however, relate directly to the enforcement of existing injunctive provisions regarding overcrowding and other conditions of confinement. See Gov't C.A. Br. 6. In remanding the case, moreover, the court of appeals provided that "the hearing will be limited to the issues raised by the parties' filings and cannot be used by the plaintiffs to expand the present case or, in effect, bring a new action." Pet. App. A5. As a result, there is no risk that the evidentiary hearings ordered by the court of appeals will fall outside the district court's remedial jurisdiction.

tions, a court considering the dissolution of existing injunctions must first determine:

> [1] whether there has been full and satisfactory compliance with the decree in those aspects of the system where supervision is to be withdrawn; [2] whether retention of judicial control is necessary or practicable to achieve compliance with the decree in other facets of the [institution]; and [3] whether the [defendant] has demonstrated * * * its good-faith commitment to the whole of the courts' decree and to those provisions of the law and the Constitution that were the predicate for judicial intervention in the first instance.

Ibid. (quoting *Freeman* v. *Pitts*, 503 U.S. at 491); see also *Board of Education* v. *Dowell*, 498 U.S. at 247; cf. *Lewis* v. *Casey*, 116 S. Ct. 2174, 2183 (1996) (applying principles of *Missouri* v. *Jenkins*, *supra*, to the prison litigation context).

That inquiry is necessarily fact-intensive and requires review of both past conduct and current conditions. Careful factual review is particularly important where, as here, there has been a history of noncompliance by the defendant, and the plaintiff class alleges current unconstitutional conduct.

Contrary to petitioners' contention (Pet. 11), the district court's 1983 decision did not satisfy that standard. In addition to expressly leaving all injunctions in effect (Gov't C.A. App. 24), the court made no finding that prison officials had complied with the court's orders to the extent practicable, or that, *in the absence of the existing injunctions*, there was no

reasonable probability that constitutional violations would recur.[8]

Nor was the district court's refusal to conduct an evidentiary hearing justified by its assertion that "modification of the prior injunctions [would] be necessary to comport with existing caselaw." Pet. App. B3. As the court of appeals observed (*id.* at A4), the effect of changed legal circumstances on an existing injunction cannot be determined without an inquiry regarding present conditions. See generally *Rufo* v. *Inmates of Suffolk County Jail*, *supra*. Assuming, *arguendo*, that subsequent judicial decisions have altered the law on which the injunctions in this case were predicated, the district court may modify the injunctions accordingly after conducting the factual inquiry ordered by the court of appeals. See Fed. R. Civ. P. 60(b).

Finally, this Court ordinarily does not review interlocutory decisions such as the remand for additional proceedings at issue here. See *Virginia Military Institute* v. *United States*, 508 U.S. 946 (1993)

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[8] The district court's 1983 finding that no reasonable likelihood existed "that unconstitutional practices will recur" (Gov't C.A. App. 23) was made in connection with its holding that "[a]ll of this court's orders and injunctions as modified heretofore remain in full force and effect." *Id.* at 24. The court of appeals, in turn, affirmed the district court's decision based in part on its conclusions that "the orders and injunctions protecting the inmates against constitutional violations, as previously modified, * * * remain in full force and effect" (788 F.2d at 1428 n.5), and that "plaintiffs may by further proceedings in the district court seek relief from any violations of those previous orders and injunctions protecting their constitutional rights." *Id.* at 1429. The district court's 1983 decision did not indicate that the injunctions were no longer necessary to prevent a return to unconstitutional conditions.

(opinion of Scalia, J., respecting denial of certiorari); *Brotherhood of Locomotive Firemen* v. *Bangor & Aroostock R.R.*, 389 U.S. 327, 328 (1967) (per curiam); R. Stern, E. Gressman, & S. Shapiro, *Supreme Court Practice* § 4.18, at 195-198 (7th ed. 1993). The lack of finality of the judgment below is thus "of itself alone" a "sufficient ground for the denial of the [writ]." *Hamilton-Brown Shoe Co.* v. *Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916).

2. Petitioners contend (Pet. 14-15) that "no case or controversy exists" here, in light of the "Immediate Termination of Prospective Relief" provision of Section 802(a) of the Prison Litigation Reform Act (PLRA), Pub. L. No. 104-134, Tit. VIII, 110 Stat. 1321-68 (to be codified at 18 U.S.C. 3626(b)(2)). That Section provides:

> In any civil action with respect to prison conditions, a defendant or intervener shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.

The "Limitation" provision of Section 802(a) of the PLRA provides:

> Prospective relief shall not terminate if the court makes written findings based on the record that prospective relief remains necessary to correct a current or ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the pro-

> spective relief is narrowly drawn and the least intrusive means to correct the violation.

110 Stat. at 1321-68 (to be codified at 18 U.S.C. 3626(b)(3)).

The PLRA (Title VIII of the Omnibus Consolidated Rescissions and Appropriations Act of 1996) was enacted on April 26, 1996. Pub. L. No. 104-134, 110 Stat. 1321. As a result, it was not considered by either court below. Certiorari to consider the effect of the PLRA on this case is therefore unwarranted at this time. *NLRB* v. *Sears, Roebuck & Co.*, 421 U.S. 132, 163-164 (1975).

Petitioners' motion to terminate all prospective relief pursuant to the PLRA is currently pending before the district court. Defendants' Brief on Applicability of PLRA and Motion to Dissolve Injunctions and Terminate All Prospective Orders with Brief, *Battle* v. *Fields*, No. CIV-72-95-B (E.D. Okla. filed July 8, 1996). That court is in the best position to determine, in the first instance, whether the findings set out in the "Immediate Termination" provision of the PLRA have been made during the course of this litigation, and, if not, whether the injunctions should nevertheless be preserved under the PLRA's "Limitation" provision because the "relief remains necessary to correct a current or ongoing violation of the Federal right."[9] Petitioners' pending motion to terminate relief under the PLRA buttresses the need for an evidentiary hearing as to current conditions within the OSP system, and emphasizes the

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[9] The class's allegations of current overcrowding and other unconstitutional conditions are directly relevant to that inquiry.

inappropriateness of review of the PLRA issue by this Court at this time.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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